

REMARKS

This communication is a full and timely response to the non-final Office Action dated July 7, 2006. By this communication, claims 1, 6, 18, 23, 25, 27, and 28 have been amended, and claims 29-36 have been added. Support for the newly claimed subject matter can be found variously throughout the specification, for example, at line 9 on page 9 through line 10 on page 10 of the Specification. Claims 1 and 3-36 are pending.

Objection to Previous Amendment

The previous amendment was objected to under 35 USC §132 for allegedly introducing new matter. Applicants respectfully traverse this rejection. However, in an effort to expedite prosecution the claims have been amended to address the Examiner's concerns. Applicants request that this objection be withdrawn.

Claim Objections

Claims 3 and 4 were objected to for allegedly being in improper dependent form. Applicants have amended claims 3 and 4 to address the Examiner's concerns, and request that this objection be withdrawn.

Rejections Under 35 U.S.C. §112

Claims 1, 18, 23, and 25-28 were rejected under the first and second paragraphs of 35 U.S.C. §112 for allegedly failing to comply with the written description requirement and alleged indefiniteness, respectively. Applicants respectfully traverse these rejections. However, in an effort to expedite prosecution these claims have been amended to address the Examiner's concerns. Applicants request, therefore, that the rejections under 35 U.S.C. §112 be withdrawn.

Rejections Under 35 U.S.C. §101

Claims 18-22 were rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter. Applicants have amended independent claim 18 to address the Examiner's concerns, and request that this rejection be withdrawn.

Rejections Under 35 U.S.C §102

Claims 1, 3-5, 8-13, and 16-28 were rejected under 35 U.S.C. §102(e) as anticipated by *Downs* (U.S. Patent No. 6,226,618). Applicants respectfully traverse this rejection.

The instant application is directed to a method and apparatus in which an audio signal is watermarked. The watermarked audio signal is split into at least two separate sections where the watermark information is spread over both sections. The watermark includes copyright information used for copyright control such as parameters that stipulate whether the audio signal may be copied and the number of times played under the user's license, for example. The first section of the watermark signal is distorted so that it may not be played without the use of a key, which is embedded in the second section of the audio signal. Because the watermark signal is spread over all sections of the audio signal, including the portion holding the key, any attempt to alter the watermark will destroy the embedded key so that the first section of the audio signal can no longer be recovered and played without distortion. As a result of this configuration, the embedded key indirectly protects the watermark. In addition, because the key is embedded in the audio content of the second section of the audio signal, the second section cannot be removed because doing so would corrupt the key for unlocking the first section. As a result, the first section could not be played without distortion.

The foregoing features are broadly encompassed in independent claims 1, 18, 23, 25, 27, and 28, which recite, among other elements, sectioning the watermarked audio signal into at least two sections each section having audio content and generating distortion in a first one of said sections of said signal in a manner recoverable by a key obtainable from at least one other section having audio content.

The *Downs* patent discloses a system for clearly distributing digital media files. In this system, an audio PCL file is watermarked, compressed, and encrypted so that it can be sent a Content SC file (see Figure 8). Moreover, the *Downs* patent discloses that the key used for decryption is stored in metadata of a License SC file (see column 10, lines 50-67). The Metadata SC file is prepared independently through the manual entry of metadata by looking up metadata on an external data base (see column 51, lines 40-65). No watermark is applied to the metadata provided in the Metadata SC. The Metadata SC may contain sample audio clips and can be sent to a content promotions website.

The Content SC, on the other hand, is formed from the combination of audio content data and the subset or portion of the metadata file, and is sent to a separate content hosting site. The *Downs* patent neither teaches nor suggests that the Metadata SC and the Content SC are combined either before or after they are sent to their respective sites. Moreover, the *Downs* patent is silent as to which metadata files are included in the Content SC of the License SC, but because the *Downs* patent does not explicitly state that these metadata files contain audio content, then it should be readily apparent to one of ordinary skill in the art that the metadata of

both the Content SC and License SC files contains merely text data.¹ The Metadata SC file is sent to a content promotions website to market the content, therefore one of ordinary skill would arguably understand that the Metadata SC file can contain audio sample clips. In contrast, the Content SC file is stored at a clearing house and downloaded by a user along with the License SC file upon the purchase of a music file, therefore a skilled artisan would arguably find it unnecessary and redundant for the Content SC to contain both an audio sample and an entire audio track. Thus, even if a proper interpretation of the *Downs* patent involves the combining of the Metadata SC and Content SC files, which Applicants believe it is not, because only the Metadata SC file contains audio data, the *Downs* patent cannot and does not disclose sectioning the watermarked audio signal as recited in the claims.

Stated differently, because both the Metadata SC and Content SC files do not both contain audio content the *Downs* patent fails to meet the claimed element of sectioning a watermark signal into at least two sections each section having audio content. For at least this reason, the *Downs* patent fails to anticipate the claims.

To properly anticipate a claim, the document must disclose, explicitly or implicitly, each and every feature recited in the claim. See Verdegall Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). *Aoyama* fails to disclose, teach, or suggest every element recited in independent claims 1, 11, and 12, therefore these claims are not anticipated by *Aoyama*. For at least these reasons, therefore, Applicants request that the rejection under 35 U.S.C.

¹ See *Downs*, column 9, lines 21-27, where metadata is defined as data related to the Content 113 but not the Content 113 itself. For example, metadata for a song may be the song title or song credit, but not the sound recording of the song.

§102 be withdrawn and independent claims 1, 18, 23, 25, 27, and 28 and their corresponding dependent claims be allowed.

Rejections Under 35 U.S.C. §103

Claims 6, 7, and 14 were rejected under 35 U.S.C. §103(a) as unpatentable over the *Downs* patent in view of *Schneier*, *Applied Cryptography*, 1996, John Wiley & Sons Inc., pp. 351-353 and 355; and claim 15 was rejected under 35 U.S.C. §103(a) as unpatentable over the *Downs* patent in view of *Jones* (U.S. Patent No. 6,697,944). Applicants respectfully traverse these rejections.

Claims 6, 7, 14, and 15 dependent from claim 1. By virtue of these dependencies, Applicants submit that these claims are allowable for at least the same reasons discussed above with respect to claim 1. In addition, these claims are further distinguishable over the *Downs* patent, the *Schneier* publication, and the *Jones* patent by the additional elements recited therein. Applicants request, therefore, that the rejection of claims 6, 7, 14, and 15 under 35 U.S.C. §103 be withdrawn and these claims be allowed.

Newly Added Claims

Claims 29-36 have been added by amendment. Applicants submit that because these claims recite at least that a key is embedded in a portion of the audio content, these claims are allowable for at least the same reasons discussed above. Applicants request, therefore, favorable consideration and allowance of these claims.

Conclusion

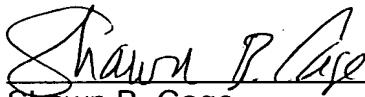
Based on at least the foregoing amendments and remarks, Applicants submit that claims 1 and 3-36 are allowable, and this application is in condition for allowance. Accordingly, Applicants request a favorable examination and consideration of the instant application. In the event the instant application can be placed in even better form, Applicants request that the undersigned attorney be contacted at the number below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: December 7, 2006

By:



Shawn B. Cage
Registration No. 51,522

P.O. Box 1404
Alexandria, VA 22313-1404
703.836.6620